

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.193 OF 2007

Dattaram Narayan Adep ...Applicant

Versus

Jay Kajaria & Anr. ...Respondents

Shri Sanjeev Hariakar for the Applicant.

CORAM : ABHAY S.OKA, J.

DATED : MAY 04, 2007.

P.C.:

1. Heard learned Advocate appearing for the revision Applicant. The revision Applicant is the first Defendant-tenant against whom a decree has been passed by the Court of Small Causes in a suit filed by the first Respondent on the ground of unauthorised subletting/transfer/assignment of the suit premises in favour of the second Respondent. The decree has been confirmed in Appeal preferred by the revision Applicant. The submission of the learned Advocate appearing for the Applicant was that the second Respondent was inducted only on the basis of an agreement for conducting the business and the Applicant always retained the control and possession over the suit premises. He submitted that the conducting agreement placed on record of the trial Court clearly shows that the Applicant did not part with right, title and interest in favour of the

second Respondent.

2. I have considered the submissions. The courts below and in particular the Appeal Court has noted that the revision Applicant did not step into witness box to prove his contention that he always retained control over the suit premises and exclusive possession was not parted with in favour of the second Respondent.

3. When it was shown that the second Respondent was occupying the suit premises, the burden was on the revision Applicant to show in what capacity the second Respondent was occupying the suit premises. However, he has not chosen to enter into the witness box. In this view of the matter it is difficult to find fault with the concurrent findings of fact recorded by the Courts below in this revision Application under section 115 of the Code of Civil Procedure, 1908. No case is made out for interference. Revision Application is rejected. On the prayer made by the Applicant, decree for possession shall not be executed till 30th June, 2007 subject to condition that the Applicant will not create any third party interests in respect of the suit premises.

JUDGE